

SENATE BILL REPORT

SB 5341

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 2, 2012

Title: An act relating to notice to injured workers by self-insured employers.

Brief Description: Requiring notice to injured workers by self-insured employers.

Sponsors: Senators Keiser, Conway, Kohl-Welles and Kline.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/25/11, 2/01/11, 2/03/11 [DPS, DNP]; 1/12/12, 2/02/12 [DP2S, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Second Substitute Senate Bill No. 5341 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

Minority Report: Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

Staff: Mac Nicholson (786-7445)

Background: Qualified employers may self-insure for workers compensation purposes. To be certified as self-insured, an employer must demonstrate to the Department of Labor and Industries (L&I) that the employer has sufficient financial ability to ensure prompt payment of compensation to its injured workers. Self-insurers must provide their injured workers with the same benefits that are provided to injured workers in state fund claims, including medical and time-loss benefits, permanent partial and total disability benefits, and death benefits. Time-loss benefits, also known as temporary disability benefits, are paid to injured workers who are unable to work because of their injury. Temporary disability benefits are paid according to a formula set in statute, and are based on the monthly wages that the worker was receiving from all employment at the time of injury. A self-insured employer who fails to comply with industrial insurance laws and regulations is subject to financial penalty and decertification.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

L&I retains oversight of the provision of benefits to injured workers of self-insured employers and will make the determination whether to allow or deny a claim. Self-insurers are authorized to manage aspects of their injured worker claims, including the payment of benefits directly to their injured workers and to medical providers. Self-insurers must pay medical charges and fees within 60 days of receipt of a proper billing or 60 days after the claim is allowed by final order or judgment. Interest at the rate of 1 percent per month will be imposed on self-insured employers who fail to make payment on proper fees and medical charges within the 60-day period.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Second Substitute): If a self-insured employer denies payment of a bill, the employer must provide the medical provider with the following information within 60 days of receipt of the billing:

- the basis for the denial;
- instructions on how to correct any billing errors, if any;
- a statement that the worker cannot be billed for proper and necessary treatment; and
- information about how to request a decision from L&I concerning the denied treatment or billing.

Failure to pay all proper fees and medical charges, or to provide the required information when payment is denied, subjects the employer to a penalty up to \$500. If a final decision concerning a denied treatment or billing is made, L&I can issue a penalty once every three business days until the payment is satisfied.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Second Substitute as Passed Committee): Eliminates the provision in the bill requiring a self-insured to provide notice when paying temporary disability benefits. Retains the language subjecting a self-insured employer to a penalty for failure to pay fees and medical charges within 60 days, and adds the requirement that a self-insured employer provider certain information to medical providers when the employer denies payment of a bill, and authorizes a penalty for failure to submit that information.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony as Heard in Committee: PRO: The original bill followed the Ombudsman recommendations. The notice complaints have been addressed and there were no complaints in 2011. However, complaints are still being made about late or non-payment of medical bills. Injured workers are still having their authorized medical bills sent to collections, and this adversely affects the injured worker. On the late payment, L&I has taken some steps that are helping the situation. L&I will issue orders about the

treatment when medical providers complain about failure to pay, and when the order is final, the employer may be penalized. Putting this in law would give it more teeth than leaving it in rule. The 2011 Ombudsman report identified non-payment of medical bills and sending the bills to collections as a problem.

CON: There are currently tools available to handle the problem. There has been a lot of progress made since the last report. It's not necessary to create a new law for this. There are a lot of reasons that bills don't get paid. The bills might be sent to the wrong place, or be for treatment on claims that aren't approved yet, there might not be proper documentation, and so on. Under current WAC, providers are never supposed to send a bill to the injured worker in an allowed claim. Self-insured employers can't fix this problem. There should be a consequence for providers who bill directly when they aren't supposed to.

Persons Testifying: PRO: Denise McKay, Ombudsman for Self-Insured Workers; Vickie Kennedy, L&I; Rebecca Johnson, WA State Labor Council.

CON: Kathleen Collins, WA Self-Insurers Assn.